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इस भाग में अलग संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced on 9th March, 2000.

BILL No. 23 OF 2000

A Bill further to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000.

Short title and commencement.

(2) It shall be deemed to have come into force on the 17th day of January, 2000.

Substitution of Designation.

2. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the principal Act), for the words the "Presiding Officer of the Appellate Tribunal", "the Presiding Officer of an Appellate Tribunal", "the Presiding Officer of a Tribunal or an Appellate Tribunal", wherever they occur, the words "the Chairperson of the Appellate Tribunal", "the Chairperson of an Appellate Tribunal", "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall respectively be substituted,

Amendment of section 2.

3. In section 2 of the principal Act,—

(i) after clause (e), the following clause shall be inserted, namely:—

'(ea) "Chairperson" means a Chairperson of an Appellate Tribunal appointed under section 9;';

(ii) for clause (g), the following clause shall be substituted, namely:—

'(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;';

(iii) after clause (j), the following clause shall be inserted, namely:—

'(ja) "Presiding Officer" means the Presiding Officer of the Debts Recovery Tribunal appointed under sub-section (1) of section 4;.'

Amendment of section 7.

4. In section 7 of the principal Act,—

(a) in sub-section (1), for the words "with a Recovery Officer", the words "with one or more Recovery Officers" shall be substituted;

(b) in sub-section (2), for the words "The Recovery Officer", the words "The Recovery Officers" shall be substituted.

(c) in sub-section (3), for the words "Recovery Officer", the words "Recovery Officers" shall be substituted.

Amendment of section 8.

5. In section 8 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may authorise the Chairperson of one Appellate Tribunal to discharge also the functions of the Chairperson of other Appellate Tribunal.".

Amendment of section 13.

6. In section 13 of the principal Act, in the proviso, for the words "the said Presiding Officers shall be varied to their", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall be varied to his" shall be substituted.

Amendment of section 15.

7. In section 15 of the principal Act,—

(a) in sub-section (1), in the proviso, for the words "the said Presiding Officer", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted;

(b) in sub-section (2), for the words "the Presiding Officer concerned", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted;

(c) in sub-section (3), for the words "the aforesaid Presiding Officer", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted.

51 of 1993.

8. After section 17 of the principal Act, the following section shall be inserted, namely:—

"17A. (1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal."

9. For section 19 of the principal Act, the following section shall be substituted, namely:—

"19. (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

Insertion of new section 17A.

Power of Chairperson of Appellate Tribunal.

Substitution of new section for section 19.

Application to the Tribunal.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,—

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order,—

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956, the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be

made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”.

Amendment of section 27.

10. In section 27 of the principal Act, in sub-section (4), after the words “is reduced”, the words “or enhanced” shall be inserted.

Amendment of section 28.

11. In section 28 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets.”.

Substitution of new section for section 30.

12. For section 30 of the principal Act, the following section shall be substituted, namely:—

Appeal against the order of Recovery Officer.

“30. (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive).”.

Amendment of section 31.

13. In section 31 of the principal Act, in sub-section (2), in clause (b), the words “or *de novo*” shall be omitted.

Insertion of new section 31A.

14. After section 31 of the principal Act, the following section shall be inserted, namely:—

Power of Tribunal to issue certificate of recovery in case of decree of order.

“31A. (1) Where a decree or order was passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.

(2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate for recovery to a Recovery Officer.

(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act.”.

Substitution of new section for section 32.

15. For section 32 of the principal Act, the following section shall be substituted, namely:—

Chairperson, Presiding Officer and staff of Appellate Tribunal and Tribunal to be public servants.

“32. The Chairperson of an Appellate Tribunal, the Presiding Officer of a Tribunal, the Recovery Officer and other officers and employees of an Appellate Tribunal and a Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.”.

1 of 1986.
1 of 1986.
39 of 1989.

Amendment of
section 34.

16. In section 34 of the principal Act, in sub-section (2), for the words, brackets and figures "and the Sick Industrial Companies (Special Provisions) Act, 1985", the words, brackets and figures, "the Sick Industrial Companies (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989" shall be substituted.

17. In section 36 of the principal Act,—

(a) in sub-section (2),—

(i) in clause (a), for the words "the Presiding Officers", the words "the Chairpersons, the Presiding Officers" shall be substituted;

(ii) in clause (b), for the words "the Presiding Officers of the Tribunals and Appellate Tribunals", the words "the Chairpersons of Appellate Tribunals and the Presiding Officers of the Tribunals" shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every notification issued under sub-section (4) of section 1, section 3 and section 8 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule."

18. (1) The Recovery of Debts Due to Banks and Financial Institutions (Amendment) Ordinance, 2000, is hereby repealed.

Repeal and
saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted on 27th August, 1993 to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto.

2. The legality and validity of the Act was, however, challenged in the Delhi High Court. In the matter of Delhi High Court Bar Association Vs. Union of India (A.I.R. 1995 Delhi 323), the Delhi High Court in its judgment and order dated the 10th March, 1995 while upholding the powers of the Central Government to constitute Tribunals other than the Tribunals constituted in exercise of powers under articles 323A and 323B of the Constitution, declared the aforesaid Act unconstitutional and void on grounds which, *inter alia*, include that—

- (i) the Act does not contain provisions for set-off, counter-claims or transfer of cases from one Tribunal to another;
- (ii) the Act has placed the Tribunals on a pedestal higher than the High Court in respect of monetary jurisdiction; and
- (iii) the judiciary has been given no role in the appointment of Presiding Officers.

3. In the Special Leave Petition, filed before it, the Hon'ble Supreme Court on 18th March, 1996, while dealing with Transfer Petitions (Civil) 659-667/95 directed that notwithstanding any stay order passed in any of the Writ Petitions sought to be transferred to the Supreme Court, the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 shall resume their functions. The Debts Recovery Tribunals have been functioning under the stay order granted by the Supreme Court for over fifty months. In subsequent hearings before the Hon'ble Supreme Court, a submission was made that the Central Government would consider amending the Act to address the legal anomalies while ensuring that the dedicated nature of the recovery system does not get diluted. In backdrop of the observation made by the Supreme Court, there was a possibility that the Supreme Court would vacate the stay order against the order of Delhi High Court. In such an eventuality, the Tribunals would cease to exist, all cases which have been transferred to Debts Recovery Tribunals from the High Courts or have been freshly instituted before the Debts Recovery Tribunals would have to be transferred back to respective High Courts and all progress made by the Tribunals would be undone. The above circumstances necessitated that the proposed amendments may be given effect by promulgation of an Ordinance. These amendments have been made to address the legal anomalies observed by the Hon'ble Court. It is now necessary that the Ordinance may be replaced by an Act.

4. Amendments to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are proposed to ensure expeditious adjudication and recovery of dues of banks and financial institutions, remove legal anomalies and strengthen the Recovery Tribunals. The main provisions of the Bill relate to—

- (i) set-off and counter-claims, appointment of Receivers and Commissioners by the Tribunal, transfer of cases from one Tribunal to another and appointment of more than one Recovery Officer in a Tribunal;
- (ii) empowering the Tribunals to issue certificate for recovery of enhanced or reduced amount on the basis of the final order of the Appellate Tribunal;
- (iii) empowering the Chairperson of the Appellate Tribunal to appraise the work of Presiding Officers of Tribunals and discharge functions of the Chairperson of another Appellate Tribunal;

- (iv) the transfer of recovery certificate from one Tribunal to another Tribunal to facilitate recovery;
 - (v) empowering the Tribunals to distribute sale proceeds among the secured creditors in accordance with the provisions of section 529A of the Companies Act;
 - (vi) the laying of notifications issued under sub-section (4) of section 1, section 3 and section 8 of the Act before the Parliament.
5. The Bill seeks to replace the said Ordinance.

NEW DELHI;
The 15th February, 2000

YASHWANT SINHA.

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for appointment of one or more Recovery Officers in the Debts Recovery Tribunals to assist these Tribunals as against the provisions for appointment of a Recovery Officer for each Tribunal under the existing Act. It is estimated that the expenditure on salary of one such post of Recovery Officer will be approximately rupees two lakh per annum.

2. The Bill, if enacted, will not involve any other expenditure of a recurring or non-recurring nature.

BILL No. 26 OF 2000

A Bill to amend the Telecom Regulatory Authority of India Act, 1997.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Telecom Regulatory Authority of India (Amendment) Act, 2000.

Short title and commencement.

(2) It shall be deemed to have come into force on the 24th day of January, 2000.

2. In the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the principal Act), in the long title, for the words “Telecom Regulatory Authority of India to regulate the telecommunication services,”, the words “Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector” shall be substituted.

Amendment of long title.

Amendment of
section 2.

3. In section 2 of the principal Act,—

(a) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “Appellate Tribunal” means the Telecom Disputes Settlement and Appellate Tribunal established under section 14;’;

(b) after clause (e), the following clause shall be inserted, namely:—

‘(ea) “licensor” means the Central Government or the telegraph authority who grants a licence under section 4 of the Indian Telegraph Act, 1885;’;

13 of 1885.

(c) in clause (j), for the word “Government”, the words “Government as a service provider” shall be substituted;

(d) in clause (k), the following proviso shall be inserted, namely:—

“Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.”.

Amendment of
section 3.

4. In section 3 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Authority shall consist of a Chairperson, and not more than two whole-time members and not more than two part-time members, to be appointed by the Central Government.”.

Substitution of
new section for
section 4.

5. For section 4 of the principal Act, the following section shall be substituted, namely:—

“4. The Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs:

Provided that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years.”.

Amendment of
section 5.

6. In section 5 of the principal Act,—

(a) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

“(2) The Chairperson and other members shall hold office for a term not exceeding three years, as the Central Government may notify in this behalf, from the date on which they enter upon their offices or until they attain the age of sixty-five years, whichever is earlier.

(3) On the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, a person appointed as Chairperson of the Authority and every other person appointed as member and holding office as such immediately before such commencement shall vacate their respective offices and such Chairperson and such other members shall be entitled to claim compensation not exceeding three months pay and allowances for the premature termination of the term of their offices or of any contract of service.”;

(b) in sub-section (5), for the words “other members”, the words “whole-time members” shall be substituted;

(c) after sub-section (6), the following sub-section shall be inserted, namely:—

“(6A) The part-time members shall receive such allowances as may be prescribed.”;

(d) in sub-section (7), the words, brackets and figure “or sub-section (3)” shall be omitted;

(e) in sub-section (8),—

(i) in clause (b), for the words “two years”, the words “one year” shall be substituted;

(ii) after clause (b), the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-section shall apply to the Chairperson or a member who has ceased to hold office under sub-section (3) and such Chairperson or member shall be eligible for re-appointment in the Authority or appointment in the Appellate Tribunal.”.

7. In section 7 of the principal Act, for sub-sections (2) and (3), the following sub-section shall be substituted, namely:—

Amendment of
section 7.

“(2) No such member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.”.

8. In section 10 of the principal Act, in sub-section (2),—

Amendment of
section 10.

(a) for the words “determined by regulations”, the word “prescribed” shall be substituted;

(b) after sub-section (2), the following proviso shall be inserted, namely:—

“Provided that any regulation, in respect of the salary and allowances payable to and other conditions of service of the officers and other employees of the Authority, made before the commencement of the Telecom Regulatory Authority of India (Amendment)Act, 2000, shall cease to have effect immediately on the notification of rules made under clause (ca) of sub-section (2) of section 35.”.

9. In section 11 of the principal Act,—

Amendment of
section 11.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to—

(a) make recommendations, either *suo motu* or on a request from the licensor, on the following matters, namely:—

(i) need and timing for introduction of new service provider;
(ii) terms and conditions of licence to a service provider;
(iii) revocation of licence for non-compliance of terms and conditions of licence;

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(v) technological improvements in the services provided by the service providers;

(vi) type of equipment to be used by the service providers after inspection of equipment used in the network;

(vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(viii) efficient management of available spectrum;

(b) discharge the following functions, namely:—

(i) ensure compliance of terms and conditions of licence;

(ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, fix the terms and conditions of inter-connectivity between the service providers;

(iii) ensure technical compatibility and effective inter-connection between different service providers;

(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(v) lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;

(vi) lay-down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(vii) maintain register of inter-connect agreements and of all such other matters as may be provided in the regulations;

(viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;

(ix) ensure effective compliance of universal service obligations;

(c) levy fees and other charges at such rates and in respect of such services as may be determined by regulations;

(d) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act:

Provided that the recommendations of the Authority specified in clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period specified in the second proviso or within such period as may be mutually agreed upon between the Central Government and the Authority:

Provided also that if the Central Government, having considered that recommendation of the Authority, comes to a *prima facie* conclusion that such recommendation cannot be accepted or needs modifications, it shall refer the recommendation back to the Authority for its reconsideration, and the Authority may, within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation if any, the Central Government shall take a final decision.”;

(b) in sub-section (3), for the words, brackets and figure “under sub-section (1)”, the words, brackets and figures “under sub-section (1) or sub-section (2)” shall be substituted.

10. In section 13 of the principal Act, the following proviso shall be inserted, namely:—

“Provided that no direction under sub-section (4) of section 12 or under this section shall be issued except on the matters specified in clause (b) of sub-section (1) of section 11.”.

11. For Chapter IV of the principal Act, the following Chapter shall be substituted, namely:—

Amendment of
section 13

Substitution of
new Chapter for
Chapter IV

CHAPTER IV

APPELLATE TRIBUNAL

14. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to—

Establishment
of Appellate
Tribunal.

(a) adjudicate any dispute—

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers;

Provided that nothing in this clause shall apply in respect of matters relating to—

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

(C) the dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885;

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

14A. (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of section 14.

Application for
settlement of
disputes and
appeals to
Appellate
Tribunal.

(2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

54 of 1969.

68 of 1986.

13 of 1885.

(3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Central Government or the State Government or the local authority or the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.

(6) The application made under sub-section (1) or the appeal preferred under sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application or appeal finally within ninety days from the date of receipt of application or appeal, as the case may be:

Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within that period.

(7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any dispute made in any application under sub-section (1), or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.

**Composition of
Appellate
Tribunal.**

14B. (1) The Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed, by notification, by the Central Government.

(2) The selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.

(3) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by the Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with one or two Members of such Tribunal as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

(4) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench.

(5) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member of the Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit.

14C. A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he—

(a) in the case of Chairperson, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;

(b) in the case of a Member, has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.

14D. The Chairperson and every other Member of the Appellate Tribunal shall hold office as such for a term not exceeding three years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of Chairperson, the age of seventy years;

(b) in the case of any other Member, the age of sixty-five years.

14E. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

14F. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

14G. (1) The Central Government may remove from office, the Chairperson or any Member of the Appellate Tribunal, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as the Chairperson or a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an enquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the Chairperson or a Member ought on such ground or grounds to be removed.

(3) The Central Government may suspend from office, the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

Qualifications
for appointment
of Chairperson
and Members.

Term of office

Terms and
conditions of
service.

Vacancies.

Removal and
resignation.

Staff of
Appellate
Tribunal.

14H. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Distribution of
business
amongst
Benches.

14-I. Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of
Chairperson to
transfer cases.

14J. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be
by majority.

14K. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it.

Members, etc.,
to be public
servants.

14L. The Chairperson, Members and other officers and employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Transfer of
pending cases.

14M. All applications, pending for adjudication of disputes before the Authority immediately before the date of establishment of the Appellate Tribunal under this Act, shall stand transferred on that date to such Tribunal:

Provided that all disputes being adjudicated under the provisions of Chapter IV as it stood immediately before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, shall continue to be adjudicated by the Authority in accordance with the provisions contained in that Chapter, till the establishment of the Appellate Tribunal under this Act:

Provided further that all cases referred to in the first proviso shall be transferred by the Authority to the Appellate Tribunal immediately on its establishment under section 14.

Transfer of
appeals.

14N. (1) All appeals pending before the High Court immediately before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, shall stand transferred to the Appellate Tribunal on its establishment under section 14.

(2) Where any appeal stands transferred from the High Court to the Appellate Tribunal under sub-section (1),—

(a) the High Court shall, as soon as may be after such transfer, forward the records of such appeal to the Appellate Tribunal; and

(b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such appeal, so far as may be from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Appellate Tribunal may deem fit.

Civil court not
to have
jurisdiction

15. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

5 of 1908.

16. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

5 of 1908.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an application for default or deciding it, *ex parte*;
- (h) setting aside any order of dismissal of any application for default or any order passed by it, *ex parte*; and
- (i) any other matter which may be prescribed.

1 of 1872.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

17. The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

2 of 1974.

Explanation.—For the purposes of this section,—

Right to legal representation.

38 of 1949.

(a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

(b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959.

(c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) “legal practitioner” means an advocate, *vakil* or an attorney of any High Court, and includes a pleader in practice.

5 of 1908

18. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

Appeal to Supreme Court.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

Procedure and powers of Appellate Tribunal.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Orders passed by Appellate Tribunal to be executable as a decree.

Penalty for wilful failure to comply with orders of Appellate Tribunal.

Amendment of section 23.

Amendment of section 35.

Amendment of section 36.

19. (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

20. If any person wilfully fails to comply with the order of the Appellate Tribunal, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which such default continues.'

12. In section 23 of the principal Act, after sub-section (2), the following *Explanation* shall be inserted, namely:—

"Explanation.— For the removal of doubts, it is hereby declared that the decisions of the Authority taken in the discharge of its functions under clause (b) of sub-section (1) and sub-section (2) of section 11 and section 13, being matters appealable to the Appellate Tribunal, shall not be subject to audit under this section.”.

13. In section 35 of the principal Act, in sub-section (2),—

(a) after clause (a), the following clause shall be inserted, namely:—

“(aa) the allowances payable to the part-time members under sub-section (6A) of section 5;”;

(b) after clause (c), the following clause shall be inserted, namely:—

“(ca) the salary and allowances and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;”;

(c) after clause (d), the following clauses shall be inserted, namely:—

“(da) the form, the manner of its verification and the fee under sub-section (3) of section 14A;

“(db) the salary and allowances payable to and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 14E;

“(dc) the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 14H;

“(dd) any other power of a civil court required to be prescribed under clause (i) of sub-section (2) of section 16;”.

14. In section 36 of the principal Act, in sub-section (2),—

(a) clause (c) shall be omitted;

(b) in clause (d), for the words, brackets and letter “under clause (l)”, the words, brackets, figures and letter, “under sub-clause (vii) of clause (b)”, shall be substituted;

(c) in clause (e), for the words, brackets and letter “under clause (m)”, the words, brackets and letters “under sub-clause (viii) of clause (b)” shall be substituted;

(d) in clause (f), for the words, brackets and letter "under clause (p)", the words, brackets and letter "under clause (c)" shall be substituted.

Ord. 2 of 2000. **15. (1)** The Telecom Regulatory Authority of India (Amendment) Ordinance, 2000 Repeal and saving is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Telecom Regulatory Authority of India was established under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) to regulate the telecommunication services and for matters connected therewith. During the course of the functioning of the said Authority, certain issues had come up which were hindering the growth of telecom sector. The President while addressing the Joint Session of Parliament on the 25th October, 1999 had stated that the Telecom Regulatory Authority of India will be strengthened to increase investor's confidence and create a level playing field between public and private operators by making suitable amendments in the Telecom Regulatory Authority of India Act, 1997. In pursuance thereof, the Central Government constituted a Group on Telecom and IT Convergence under the Chairmanship of the Finance Minister on 13.12.1999. One of the terms of references of the Group was to consider and make recommendations to the Central Government with reference to strengthening the Authority through suitable amendments in the Telecom Regulatory Authority of India Act, 1997. The Group submitted its recommendations to the Central Government and the recommendations have been accepted by the Central Government.

2. As Parliament was not in session and in view of the urgency to remove the impediments in the growth of this basic infrastructure sector, the President was pleased to promulgate the Telecom Regulatory Authority of India (Amendment) Ordinance, 2000 on the 24th day of January, 2000.

3. The salient features of the amendments effected by the said Ordinance are as follows:—

- (i) a clear distinction has been made between the recommendatory/advisory and the regulatory functions of the Authority as envisaged under sub-section (1) of section 11 of the Act;
- (ii) seeking of recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of section 11(1) (a) of the Act has been made mandatory for the Central Government;
- (iii) the functions of the Authority, *inter alia*, now include:—
 - (a) to fix the terms and conditions of interconnectivity between service providers;
 - (b) to lay down the standards of quality of service to be provided by the service providers and ensure quality of service;
 - (c) to make recommendations on efficient management of available spectrum;
- (iv) the composition of the Authority has also been changed. The Authority will now consist of a Chairperson and not more than two whole-time members and not more than two part time members to be appointed by the Central Government. The Chairperson and other members of the Authority shall be appointed from amongst persons having special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs;
- (v) tariff setting function of the Authority has been brought under the purview of sub-section (3) of section 11;
- (vi) further, the decisions of the Authority taken in discharge of its functions under sections 11(1)(b), 11(2) and 13 which are appealable to the Appellate Tribunal shall not be subject to audit by the Comptroller and Auditor General of India;

(vii) new provisions have been made for establishment of a Tribunal known as the Telecom Disputes Settlement and Appellate Tribunal for adjudicating disputes between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and also to hear and dispose of any appeals from the direction, decision or order of the Authority.

4. The Bill seeks to replace the said Ordinance.

NEW DELHI;
The 18th February, 2000.

RAMVILAS PASWAN.

FINANCIAL MEMORANDUM

Clause 11 of the Bill proposes to provide for establishment of an independent statutory appellate body, namely, the Telecom Disputes Settlement and Appellate Tribunal. The recurring expenditure towards the pay and allowances of the Chairperson and Members of the Appellate Tribunal and the officers and other employees of the Appellate Tribunal is estimated approximately at Rs. 3.95 crores per annum. Non-recurring expenditure on items such as furniture, office equipments, vehicles, etc., of the Appellate Tribunal is estimated approximately at Rs. 39 lakhs. The Bill if enacted will not incur any other recurring or non-recurring expenditure.

BILL No. 37 OF 2000

A Bill to repeal the Indian Companies (Foreign Interests) Act, 1918 and the Companies (Temporary Restrictions on Dividends) Act, 1974.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

1. This Act may be called the Indian Companies (Foreign Interests) and the Companies (Temporary Restrictions on Dividends) Repeal Act, 2000. Short title.

2. The Indian Companies (Foreign Interests) Act, 1918 and the Companies (Temporary Restrictions on Dividends) Act, 1974 are hereby repealed. Repeal of Acts
20 of 1918 and
35 of 1974.

STATEMENT OF OBJECTS AND REASONS

The Commission on Review of Administrative Laws was set up by the Central Government on the 8th May, 1998, *inter alia*, for review of administrative laws and for recommending follow-up steps thereafter for repeal and amendment of laws. In pursuance of the recommendations of the said Commission, the Central Government has decided to repeal the Indian Companies (Foreign Interests) Act, 1918 and the Companies (Temporary Restrictions on Dividends) Act, 1974 which have become obsolete and retention thereof as separate Acts are unnecessary.

2. The Bill seeks to repeal the aforesaid Acts.

NEW DELHI;
The 24th February, 2000.

RAM JETHMALANI.

BILL No. 41 OF 2000

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-first year of the Republic of India as follows:—

1. This Act may be called the Constitution (Eighty-ninth Amendment) Act, 2000. Short title.

2. In article 269 of the Constitution, for clauses (1) and (2), the following clauses shall be substituted, namely:— Amendment of article 269.

'(1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Explanation.—For the purposes of this clause,—

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.'

Substitution of new article for article 270.

3. For article 270 of the Constitution, the following article shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1996, namely:—

Taxes levied and distributed between the Union and the States.

'270. (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268 and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means,—

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.'

Omission of article 272.

4. (1) Article 272 of the Constitution shall be omitted.

(2) Notwithstanding anything contained in sub-section (1), where any sum equivalent to the whole or any part of the net proceeds of the Union duties of excise including additional duties of excise which are levied and collected by the Government of India and which has been distributed as grants-in-aid to the States after the 1st day of April, 1996, but before the commencement of this Act, such sum shall be deemed to have been distributed in accordance with the provisions of article 270, as if article 272 had been omitted with effect from the 1st day of April, 1996.

(3) Any sum equivalent to the whole or any part of the net proceeds of any other tax or duty that has been distributed as grants-in-aid to the States after the 1st day of April, 1996 but before the commencement of this Act shall be deemed to have been distributed in accordance with the provisions of article 270.

STATEMENT OF OBJECTS AND REASONS

The Tenth Finance Commission had submitted its report on the 26th November, 1994 for the period of five years, *i.e.*, from 1995-96 to 1999-2000. The said report was laid on the table of both the Houses of Parliament on the 14th March, 1995. One of the recommendations of the Commission that has been under consideration of the Government is an alternative scheme of sharing of the proceeds of certain Union taxes and duties between the Union and the States.

2. The alternative scheme envisages that twenty-six per cent. out of the gross proceeds of Union taxes and duties (excluding stamp duty, excise duty on medicinal toilet preparations, Central Sales Tax, Consignment tax, cesses levied for specific purposes under any law made by Parliament and Surcharge) is to be assigned to the States in lieu of their existing share in income-tax, basic excise duties, special excise duties and grants in lieu of tax on railway passenger fares.

3. In addition, three per cent. share in the gross proceeds of all Central taxes and duties (excluding stamp duty, excise duty on medicinal /toilet preparations, Central Sales Tax, Consignment tax, cesses levied for specific purposes under any law made by Parliament and Surcharge) is to be assigned to the States in lieu of their existing share in Additional Excise Duties in lieu of Sales Tax on tobacco, cotton and sugar. The Commission had proposed that tobacco, cotton and sugar may continue to be exempt from Sales Tax and the Additional Excise Duties in lieu of Sales Tax on these items may be merged with the Basic Excise Duties.

4. Whether the alternative scheme would be more gainful to the Centre or to the States *vis-a-vis* existing arrangements would entirely depend on the relative growth in the Collection of various Central taxes and duties to be pooled.

5. The benefits of the scheme have been listed by the Commission in para 13.2 and 13.3 and 13.18 of their reports. These are as follows :—

(i) with a given share being allotted to the States in the aggregate revenues from Central taxes, the States will be able to share the aggregate buoyancy of Central taxes;

(ii) the Central Government can pursue tax reforms without the need to consider whether a tax is shareable with the States or not;

(iii) the impact of fluctuations in Central tax revenues would be felt alike by the Central and the State Governments;

(iv) should the taxes mentioned in articles 268 and/or 269 form part of this arrangement, there will be a greater likelihood of their being tapped; and

(v) the progress of reforms will be greatly facilitated if the ambit of tax sharing arrangement is enlarged so as to give greater certainty of resource flows to, and increased flexibility in tax reform.

6. The above scheme recommended by the Commission is in national interest as it helps to remove a perceived inter-tax bias in the tax mobilisation effort of the Government of India while leaving sufficient flexibility for meeting Centre's exclusive needs by keeping Cesses and Surcharges outside the pooling arrangement.

7. A Discussion Paper bringing out various aspects of the scheme was laid on the table of both the Houses of Parliament on the 20th December, 1996 with a view to generate an informed debate.

8. On the basis of a consensus reached in the Third Meeting of the inter-State Council held on the 17th July, 1997, the then Government had agreed in principle to accept the scheme recommended by the Tenth Finance Commission subject to certain modifications.

9. The Government has decided to ratify the decision taken by the previous Government according in principle approval for the scheme recommended by the Tenth Finance Commission with some modifications.

10. Firstly, the percentage share of States is to be reviewed by successive Finance Commissions instead of freezing it for fifteen years as suggested by the Tenth Finance Commission.

11. Secondly, Government has decided to change the sharing of "gross proceeds" as recommended by the Tenth Finance Commission to the sharing of "net proceeds" in order to maintain consistency between articles 270, 279 and 280 of the Constitution. However, this will not result in any consequent loss to the States because the Government has also simultaneously decided to compensate the States by suitably enhancing the percentage share beyond 29%.

12. Thirdly, as intended by the Commission, no amendment is sought to be done in article 271 which authorizes the Central Government to levy surcharge on Central taxes and duties for the purpose of the Union.

13. The scheme will be effective from 1st April, 1996. The percentage share of net proceeds during 1996-97 to 1999-2000 will be such that the States' share is 29% of the gross proceeds. The recommendations of the 11th Finance Commission, which has been mandated to give its final report by 30th June, 2000, will cover the 5 year period w.e.f. 1st April, 2000.

14. In order to implement this decision, this Bill seeks to amend articles 269, 270 and 272 of the Constitution so as to bring several Central taxes and duties like Corporation tax and Customs duties at par with personal income-tax as far as their constitutionally mandated sharing with the States is concerned.

NEW DELHI;
The 25th February, 2000.

YASHWANT SINHA.

[Copy of letter No. F. 10 (21)-B(S)/99, dated the 23rd February, 2000 from Shri Yashwant Sinha, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the Constitution (Eighty-ninth Amendment) Bill, 2000 for giving effect to, with some modifications, the recommendations of the Tenth Finance Commission regarding an Alternative Scheme of Devolution of Central Taxes, recommends under article 274(1) and article 117(1) of the Constitution of India the introduction in and the consideration under article 117(3), of the Bill by Lok Sabha.

G. C. MALHOTRA,
Secretary-General.

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